IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.Rev.Pet.No. 253 of 1998(M)

CRA.267/1996 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM
CC.186/1988 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONERS:-APPELLANT NOS.1 & 3:

1. K.S.HARIHARAN
PROPRIETOR, M/S RAMESH & CO.
RAMESH BHAVAN, ETTUMANOOR
KOTTAYAM DISTRICT

2. H.RAMESH
S/O K.S.HARIHARAN
RAMESH BHAVAN, ETTUMANOOR
KOTTAYAM DISTRICT.

BY ADV. SRI.M.N.SUKUMARAN NAYAR(SR.)
SRI.B.RAMAN PILLAI

RESPONDENT:- COMPLAINANT:

C.B.I. COCHIN UNIT
REPRESENTED BY THE STANDING COUNSEL
TO THE C.B.I., HIGH COURT OF KERALA
ERNAKULAM

BY ADV. SRI.K.P.SATHEESAN
ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12.12.2000 , ALONG WITH CRRP NO. 300 OF 1998 THE COURT ON 12/12/2007 PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.253 & 300 OF 1998

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Dated this the 12th day of December 2007

ORDER

These two revision petitions are at the instance of accused Nos.1, 3 and 4 (accused No.3 who was petitioner No.2 in Crl.R.P.No.253/1998 has expired during the pendency of the revision petition). They were concurrently found guilty under Section 120 B read with Section 420 and 467 of the Indian Penal Code by the trial court as well as the appellate court. Since we are not concerned with the order passed against accused Nos.2 and 3, it is not necessary to refer to the case against them separately. The trial court convicted and sentenced accused No.1 under Section 420 IPC to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for three months. He was also convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for three months under Section 120B read with Section 420 and 467 IPC. Accused No.4 was

convicted and sentenced under Section 467 IPC to undergo rigorous imprisonment for two years and to pay fine of Rs.10,00/- and in default to undergo simple imprisonment for three months. He was also convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for three months under Section 120B read with Section 420 and 467 IPC.

2. The appellate court while confirming the above order of conviction passed against the petitioners reduced and modified the substantive sentence of imprisonment from two years to one year each; and the fine amount was reduced from Rs.10,000/- to Rs.5,000/-.

3. The Inspector of Police, Special Police Establishment CBI, Kochi had charge sheeted the petitioners and two others before the Chief Judicial Magistrate's Court, Ernakulam. The prosecution case in a nut shell was that the accused No.4 had, after entering into a criminal conspiracy, fabricated false consignment notes and lorry bills and presented them before the

Ettumanoor Branch of State Bank of Travancore between June 1985 and January 1986 and caused a loss to the Bank to the tune of Rs.10,87,361/-. Accused Nos.1 to 3, who had availed of various credit facilities from the Bank, had presented these bills and other documents and represented that huge quantities of rubber had been despatched to Hyderabad during the period referred to above. The Bank had, on the strength of the credit facility available to accused Nos.1 to 3, discounted those bills and made payments to them. Later, the consignees at Hyderabad who were supposed to honour the bills had refused to make payment. On enquiries made by the Bank, it was revealed that the consignment notes, lorry receipts etc. were forged documents and that the accused had intentionally and in furtherance of criminal conspiracy, cheated the Bank by inducing it to discount the bills resulting in a loss to the tune of more than Rs.10 lakhs as mentioned earlier.

4. PW's 1 to 24 were examined on the side of the prosecution and Exts.P1 to P103 were marked on its side.

Though no witnesses were examined on the side of the defence, Exts.D1 to D11 were marked on its side. The trial court after an elaborate consideration of the oral and documentary evidence on record found that the prosecution had succeeded in proving the charge against the four accused under Section 120 B read with Sections 420 and 467 IPC, and they were accordingly convicted and sentenced. As mentioned earlier, the appellate court confirmed the order of conviction passed by the trial court. But the sentence was modified. Accused No.2 was acquitted by the appellate court.

5. It is contended by learned counsel for the petitioners/accused that the order of conviction and sentence passed against them is illegal, irregular and unsustainable. The primary contention raised by the petitioners is that the courts below had glossed over the inherent defects and deficiencies in the prosecution case while holding them guilty. It is pointed out by the learned counsel that the Manager of the Bank who was examined as PW20 had in fact lodged a complaint before

Ettumanoor Police which was registered as crime No.175/1986. In the above complaint filed on July 14, 1986, PW20 had implicated accused Nos.1, 2, M/S Globe Transport Corporation and M/S Amruthsar Carriers, Bombay as accused. But later CBI had registered Ext.P96 FIR on June 24, 1987 alleging offences punishable under various Sections of the Prevention of Corruption Act and under Section 420 IPC. In this crime, PW20 was arraigned as accused No.1 and accused No.3 in this case was implicated as accused No.2. Later, the investigating officer deleted PW20 from the array of the accused and added the present petitioners. It is contended by the learned counsel that the FIR registered by the local police at the instance of PW20 had not seen the light of the day. The prosecution had never bothered to explain as to why the said vital document had been swept under the carpet. It is also the contention of the petitioners that Exts.D1 to D11 were not considered by the courts below in their proper perspective which in fact had cut at the root of the prosecution case.

6. Per contra, it is contended by Sri.S.Sreekumar, learned Standing Counsel for the CBI, that the courts below after appreciating the oral and documentary evidence in a meticulous manner, had concurrently found the petitioners guilty. Therefore this court in exercise of its revisional jurisdiction may not be justified in re-appreciating the evidence as requested by the petitioners.

7. Petitioner No.1 in Crl.R.P.253/98 who was arraigned as accused No.1 in the case is stated to be the Proprietor of M/S Ramesh & Company, Petitioner No.2 in this revision petition who faced the trial as accused No.3, is no more. He had allegedly helped his father (accused No.1) in the business along with accused No.2 who had been acquitted by the appellate court. The above order of acquittal has not been challenged by the prosecution. The prosecution case was that the bank had been extending certain credit facilities to the accused for the last several years. Accused No.4 had allegedly prepared lorry receipts and consignment notes in connivance with the other

accused for transportation of rubber to Hyderabad. Prosecution alleged that accused No.4 was an agent of M/S Globe Transport Corporation. The accused had presented 19 such forged lorry receipts along with corresponding number of consignment notes and other supporting documents before the Bank for the purpose of this transaction.

8. As mentioned earlier, the Bank had discounted these bills and accused 1 to 3 had received the bill amounts from the Bank. But the so called consignees in Hyderabad had refused to honour the bills forwarded by the Bank to its branch in Hyderabad, on the ground that they had not placed any orders in respect of those consignments. PWs 13 and 14 are stated to be the consignees in whose name the consignments covered by the lorry receipts and notes, were dispatched from Kottayam to Hyderabad.

9. In this context, it may also be noticed that the specific case of the prosecution was that the consignments of rubber were never transported to Hyderabad. But PWs 13 and 14 did

not say so before the court. Their specific case was that they did not honour the bills, since they had not placed any orders in respect of those consignments. In other words, no other witness examined on the side of the prosecution did have a case that the consignees did not honour the bills for the reason that the consignments had not reached Hyderabad.

10. In this context, the evidence of PW20, the bank manager is also relevant. It is not in dispute that PW20 was in charge of the Branch at Kottayam during the relevant period and it was in fact he who had, on presentation of Exts.P5 to 59 bills in question, discounted them on the strength of the credit facilities available to accused 1 to 3 and released the money thereof to them. In his deposition PW20 had asserted that he had discounted all the bills after he was convinced that the goods covered by those consignments had been despatched by the accused. For this purpose he had inspected the invoice, lorry receipts, insurance paper, etc. He further stated that bills would be discounted only after verification of these records. The

specific case of PW20 was also that the consignees in Hyderabad refused to honour the bills only for the reason that they had not placed any orders for those consignments. In other words, PW20 did not have a case that consignments never reached Hyderabad as alleged by the prosecution. More significantly, he had also stated that the goods were re-transported from Hyderabad after they were handed over to accused 1 to 3 at Hyderabad. But it is pointed out by learned Standing Counsel for the respondent that PW20 had admitted in his re-examination that he had not personally verified whether the goods were despatched. He only stated that he believed that goods had been despatched particularly since lorry receipts would be presented before the Bank only after despatch of goods. In this context, learned Standing Counsel places heavy reliance on the provisions contained in Section 106 of the Evidence Act. He contends that the prosecution cannot be expected to prove the negative. If the accused took the stand that they had transported the goods from Kottayam to Hyderabad, it was something in their knowledge

and there would have been documents in their possession to establish that fact. The accused had not produced any such document to show that the goods had in fact reached Hyderabad. It is the contention of the learned Standing Counsel that in the absence of any such evidence from the side of the defence, the prosecution case cannot be thrown over board. I will deal with this contention at a later stage.

11. Learned counsel appearing for the petitioners have raised a specific contention that glaring inconsistency in the prosecution case had been totally glossed over by the courts below. The evidence of PW20, the manager of the Bank, has been highlighted by the learned counsel for this purpose. It is not in dispute that the Bank had instituted a civil suit before the Subordinate Judge's Court, Kottayam for recovery of the money due from accused Nos.1 to 3 in connection with the transactions involved in this case. Ext.D7 is the copy of the plaint in the said suit. PW20 in his capacity as the Manager had filed the suit. The specific case of the manager in the plaint was that the

accused 1 to 3 (defendants 1, 3, 4) had dispatched the goods covered by the lorry receipts and consignment notes to Hyderabad and later they were re-transported by them on failure of the consignees to take delivery thereof. Ext.D8 was the deposition of the manager in the said civil suit in which he had deposed that goods were transported to Hyderabad and they were re-delivered to the accused.

12. In this context, it may also be necessary to refer to the complaint filed by PW20 before Ettumanoor Police (Crime No.175/86). Though the CBI had never bothered to get the said FIR marked in this case, the CD file relating to the above crime has been marked in this case as Ext.P94. A copy of the FIR in Crime No.175/1999 is available on record in this file along with a copy of the written complaint which was admittedly filed by PW20. In the said complaint, PW20 had alleged that the accused (A1, A2 and M/S Globe Transport Corporation, M/S Amruthsar Carriers, Bombay) had cheated the Bank by inducing to discount the bills. The specific case of the Manager in the said complaint

was that the accused had colluded with each other and misappropriated the goods with an intention to defraud the Bank. It was further alleged that the carriers had no authority to deliver goods to accused 1 and 2 without production of lorry receipts issued by them at the place of destination. Though the manager had filed this complaint before the police on July 19, 1986 he had instituted the civil suit before the Subordinate Judge's Court in May 1986 itself. He had produced all the original bills before the civil court. It appears that Ettumanoor Police could not conduct any investigation in the above crime because of the fact that all the relevant documents had already been produced in the civil court. Anyhow, the fact remained that Ettumanoor Police did precious little on the complaint lodged by PW20.

13. The CBI registered the crime in this case on June 24, 1987 initially against PW20 and accused No.3 in this case. As noticed already, PW20 was deleted from the array of the accused at a later stage and A1, A2 and A4 were later added as accused.

Accused No.4, according to the prosecution, was an agent of M/S Globe Transport Corporation. He had allegedly misused lorry receipts and consignment notes in the name of Globe Transport Corporation, though his agency had been terminated in the year 1983. Prosecution further alleged that A4 had no authority to accept any consignments on behalf of Globe Transport Corporation after he ceased to be its agent in the year 1983. The above contention necessarily leads to the question whether the prosecution had established that there was an agreement of agency between accused 4 and M/S Globe Transport and also whether the agency was terminated as alleged by the prosecution in the year 1983 itself.

14. Sri.M.Madhusoodhanan, learned counsel for accused No.4 has invited my attention to Exts.D6, D9, D10 and D11. According to accused No.4, he had been running M/S Sudarsan Roadways during the relevant period. In September 1980, M/S Globe Transport Corporation had authorised him to accept certain specified consignments on their behalf. Ext.D6 is stated

to be the letter of authorisation issued by M/S Globe Transport Corporation in this regard. The prosecution had relied on Ext.P75 very heavily to show that accused No.4 was not the agent of M/S Globe. By Ext.P75 Globe had terminated its agency with accused No.4. The prosecution case was that accused No.4 had confirmed and accepted the terms and conditions on which its agency was terminated with M/S Globe. It proved that accused No.4 had admittedly entered his signature in it dated August 25, 1987. It is contended by him that Ext.P75 was got executed by the CBI under duress. Similarly, Ext.P79 was also got executed under duress. In these documents, accused No.4 is stated to have agreed to settle accounts between him and M/S Globe very soon. Accused No.4 had caused to issue Ext.D9 lawyer notice to the investigating officer on March 28, 1988 informing him that unless the document which was got executed under duress was returned to him, appropriate legal action would be taken against the officer and also PW16, one of the partners of M/S Globe. PW24, the investigating officer in the

course of his examination had admitted that he had received Ext.D9 lawyer notice. But admittedly he had not responded to the said legal notice. It was the further case of Accused No.4 that shortly after issue of Ext.D9 lawyer notice to the investigating officer, he had moved this court for anticipatory bail apprehending his arrest in connection with the above case. The CBI who was the respondent in the said application had informed the court that no case had been registered against accused No.4. Accordingly the above application for anticipatory bail viz. Crl.M.C.325/1988, was closed recording the above submission. But still accused No.4 was implicated in the case later. Ext.D10 is the copy of the bail application referred to above. In the said application, petitioner had asserted that an agency agreement and some other letters were got executed under duress by the investigating officer and PW16 at the office of the CBI.

15. It is significant to note that PW24 in his deposition had admitted the presence of PW16 at his office on March 25, 1988,

the day on which Ext.P75 and other documents were allegedly got executed by the petitioner. I have referred to the above aspects of the case a little elaborately only to highlight the fact that the trial court and the appellate court had not adverted to this aspect of the defence case at all in their respective orders. It has to be remembered that PW24 is a responsible officer of the CBI. The allegations made against him in Ext.D9 were of very serious nature. Though PW24 admitted that he had received Ext.D9, he had not bothered to controvert the allegations by sending a reply to accused No.4. He had approached the issue very casually as is evident from the answer given by him to the relevant question in the course of his cross examination. His attention was also drawn to the bail application filed by accused No.4 before this court. PW24, while conceding that there were allegations against him in the lawyer notice and the bail application that on March 25, 1988 some documents were got executed under duress from accused No.4 in the presence of PW16, he did not seem to have attached any significance to

those allegations at all.

16. In the above context, I may also refer to yet another aspect of the case. The defence had taken up a specific plea that the Bank Manager (PW20) and M/S Globe Transport Corporation had been deleted from the array of the accused due to extraneous reasons. (It may be remembered that M/S Globe was an accused in Crime No.175/86 of Ettumanoor Police Station in which PW20 was the defacto complainant). To a query as to why the Bank manager was deleted from the array of the accused though he was implicated as accused No.1 at the time when the crime was registered by the CBI initially, the answer by PW24 was that it was revealed during the course of investigation that "there was no malafide intention on the part of the manager". But curiously no report for deleting the Bank Manager is seen to have filed before the trial court. The casual response of PW24 to a query in this connection was that he thought that he had filed a report before the CBI court with regard to the deletion of the Bank Manager. Anyhow, the fact remains that the Bank

Manager was deleted from the array of the accused. Curiously PW24 had further admitted that he was aware that there was inconsistency in the version given by PW20 in the civil case and the prosecution case.

17. In this context, it may be necessary to refer to the evidence of PW16 also. According to the prosecution, accused No.4 had misused lorry receipts, goods consignment notes, etc. in the name of M/S Globe Transport Corporation for the purpose of defrauding the Bank. PW16 deposed before the court that he was a partner of M/S Globe Transport Corporation earlier. According to him, the branch of M/S Globe at Hyderabad was closed in 1977 and later it was restarted in 1980. He further stated that during 1982-83 agency of Globe transport at Kottayam was given to accused no.4. He claimed that Ext.P75 was the agreement signed by M/S Globe and accused No.4 in this regard. According to PW16, after termination of agency given in favour of A4, lorry receipts, Goods Consignment notes and some other documents relating to M/S Globe were not

returned by accused No.4. He further contended that accused No.4 had no authority to book any consignments in the name of M/S Globe after termination of his agency. In cross examination, PW16 admitted that he had authorised accused No.4 to book consignments and to look after the business of M/S Globe in Kerala. He admitted his signature in Ext.D6 which authorised accused No.4 to accept bookings. To another question, PW16 admitted that he had not informed anybody about the termination of agency between M/S Globe and accused No.4 nor had he issued any paper publication in this regard. Further, PW16 had also admitted that accused No.4 was a partner in M/S Sudarsan Roadways along with him and his wife during 1982-83 when Ext.D6 was issued. PW16 had also admitted his signature in Ext.D1 in this regard. The prosecution had relied on the evidence of PW16 to establish its case that accused No.4 had misused the lorry receipts and other documents relating to M/S Globe even after termination of his agency.

18. Similarly, the evidence of PW15 was also pressed into

service for this purpose. This witness claimed that he was working as an agent of Globe Transport Corporation at Hyderabad. PW16 also had advanced such a case in his deposition. But curiously in cross examination, PW15 admitted that he had not received any money by way of commission from Globe Transport after 1977. He further conceded that there was no document to show that he was appointed as the agent of M/S Globe. He further admitted that he had no idea about the business dealings of Globe Transport Corporation after 1977. He further stated that he had not seen any other lorry receipts of the Globe Transport Corporation during the relevant period. The evidence of PWs15 and 16 in my view did not in any way improve the case of the prosecution.

19. Though learned Standing Counsel contended that the evidence of these witnesses will undoubtedly show that accused No.4 had misused the lorry receipts and Goods Consignment notes of M/S Globe even after termination of his agency, as noticed already, the prosecution case was that the accused had

not transported any consignment to Hyderabad covered under Exts.P5 to P55 lorry receipts, consignment notes, etc. But the evidence on record, particularly that of PW20, clearly revealed that the prosecution had not succeeded in establishing that no goods were transported to Hyderabad on the basis of the documents produced by the accused before the Bank. On the contrary, the evidence of PW20 and that of PWs13 and 14 clearly showed that the defence set up by the accused cannot be ignored or overlooked totally.

20. Further, the Bank manager when he was examined before the civil court had categorically admitted that the consignment had in fact reached Hyderabad. His complaint before the Ettumanoor Police also was in the same line. Therefore, I am not inclined to disbelieve the defence version totally. In that view of the matter, the accused are entitled to get the benefit of doubt. The discussion made above with regard to the manner in which PW24 had conducted investigation, undoubtedly reveals that the officer had made a very casual

approach to the entire investigating process. The fact that he had not bothered to refute the allegations made in Ext.D9 lawyer notice is telltale of his casual approach to the entire issue. The deletion of the Bank manager from the array of the accused is also yet another indication. As noticed already, in response to a query in this regard in the course of cross examination PW24 had stated that he thought he had filed report in this regard before the trial court. In my view, any officer worth his salt would not have ignored a legal notice like Ext.D9, in which it was specifically alleged that he had got executed a document from accused No.4 under duress and coercion. I do not propose to make any further observation on the statement made by PW24 in his deposition. Suffice it to say that his evidence does not inspire any confidence at all. The trial court as well as the appellate court had proceeded to give undue importance to some statements made by accused in Section 313 statements. At the same time, no significance was attached to the documents produced by the defence which had unambiguously shown that

the investigating officer had shown undue enthusiasm in getting the charge stuck on the accused. No attempt was also made to clear the ambiguities and dispel the incongruities in the case of the prosecution.

In the above facts and circumstances, I am satisfied that the petitioners/accused Nos.1 and 4 are entitled to get the benefit of doubt. The trial court and appellate court in my view were not justified in holding the petitioners guilty. Therefore, the order of conviction and sentence passed against the petitioners is set aside. The revision petitions are allowed. The bail bonds executed by the petitioners and the sureties shall be discharged.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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Crl.R.P.No.253 & 300 OF 1998

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ORDER

Dated 12th Dec. 2007